U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 31200938

Date: JUNE 4, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a postdoctoral associate in physics at an American university who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that he warranted an approval considering the totality of the evidence that he is an individual of extraordinary ability. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

## II. ANALYSIS

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner claimed he met three of the regulatory criteria relating to judging, original contributions, and authorship of scholarly articles.

The Director decided that the Petitioner satisfied all three of those criteria, but he did not demonstrate eligibility in a final merits determination. The Director determined he did not demonstrate his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. On appeal, the Petitioner maintains that he met this classification's stringent requirements in the final merits determination. After reviewing all the evidence in the record, we conclude he did not demonstrate that he qualifies for this immigrant classification.

### B. Final Merits Determination

As the Director did not offer analysis under any of the individual criteria, we will not address those here other than to indicate it was the Director's determination that the Petitioner submitted the requisite initial evidence. Now, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119–20). *See also* 6 *USCIS Policy Manual* B.2, https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of

the immigrant classification). In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner earned his PhD in 2013 and was a postdoctoral associate as part of his university's postdoctoral program when he filed this petition. We observe that this position is in keeping with a scholar and researcher in the early part of his career rather than one who has risen to the very top of their field of endeavor.[1] As indicated above, the Director determined that the Petitioner served as a judge of others' work, made original contributions in his field, and authored scholarly articles. The record, however, does not demonstrate that his personal and professional achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

In the denial, the Director acknowledged the Petitioner's claim in the initial filing that he performed peer review at least 60 times, but he failed to provide evidence to support those claims. The Director further concluded the Petitioner completed 14 manuscript reviews as of the petition filing date. The Director indicated that whether the correct number of reviews was 14 or 60, the Petitioner did not establish that his judging experience was reflective of a career of acclaimed work in the field.

On appeal—as he also did in his response to the Director's request for evidence (RFE)—the Petitioner states that the Director did not follow guidelines within the USCIS Policy Manual because, according to the Petitioner, the Director identified specific kinds of evidence he should have submitted but did not. We do not agree with the Petitioner that the Director adjudicated the petition in a manner that is contrary to USCIS policy. The USCIS Policy Manual provides:

> An officer may not limit the kind of evidence the officer thinks the person should be able to submit and deny the petition if that particular type of evidence . . . is absent, if the person nonetheless submitted other types of evidence that meet the regulatory requirements for the classification.
>
> For example, an officer may think that if a person is extraordinary, there should be published articles about the person and the person's work. However, an officer cannot deny the petition because no published articles were submitted, so long as the petitioner has submitted other evidence that meets the three qualifying criteria which demonstrates the person is in fact extraordinary. Approval or denial of a petition is based on the type and quality of evidence submitted rather than assumptions about the failure to address different criteria.

[1] The National Institutes of Health and the National Science Foundation define a postdoctoral scholar as one who has received a doctoral degree (or equivalent) and is engaged in a temporary and defined period of mentored advanced training to enhance the professional skills and research independence needed to pursue his or her chosen career path. *Frequently Asked Questions (FAQs) Research Training and Career Development*, National Institutes of Health, https://researchtraining.nih.gov/resources/faq#Research-Training-and-Career-Development?anchor=question56806. Postdoctoral scholars also train under the direction and supervision of faculty mentors in preparation for academic or research careers. *Appointment Policy Highlights*, UCLA Postdoctoral Scholars, https://www.postdoc.ucla.edu/resources/appointment-information/appointment-types-and-criteria/.

*See generally* 6 *USCIS Policy Manual* B.2, https://www.uscis.gov/policymanual. What the policy prohibits is an officer presuming that if a foreign national actually has extraordinary ability, they should be able to produce evidence for one of the specific categories of evidence at 8 C.F.R. § 204.5(h)(3)(i)–(x) but did not. For instance, the Director is prohibited from denying this petition because it was the adjudicating officer's opinion that this Petitioner should have received awards for his research work, but he did not offer evidence to satisfy the prizes or awards criterion at 8 C.F.R. § 204.5(h)(3)(i) under step one when evaluating the individual criteria.

That is not the situation we identify in the Director's denial when they evaluated the Petitioner's judging experience in the final merits determination. The Director noted that peer review is a routine element in the Petitioner's field and that participation in the peer review process does not automatically demonstrate eligibility in a final merits determination. The Director specifically indicated that without evidence that sets the Petitioner apart from others in his field, "such as evidence that he has a consistent history of completing a substantial number of review requests relative to others, or chaired a technical committee for a reputable conference, the petitioner has not established his peer review experience places him among that small percentage at the very top of the field of endeavor." Here, we do not consider the Director's conduct to go against the guidance listed in the USCIS Policy Manual.

The Petitioner's other appellate arguments relating to his peer review experience consists of the Director attributing an incorrect number to the instances in which he has performed peer review, that noteworthy journals relied on his expertise to perform peer review, and the field's view that he is an expert as represented by his appointment to an editorial board for Frontiers, an academic publisher.

The Director's decision questioned the Petitioner's claim in the initial filing that he performed peer review in at least 60 instances because the record did not contain evidence supporting that assertion. On appeal, the Petitioner notes the Director did not mention documentation from Clarivate's Web of Science platform "documenting at least 45 reviews." First, the Petitioner does not address the inconsistent number of instances he claimed he judged the work of others through peer review that he offered within the initial filing versus his account in the appeal brief. Reviewing the record reveals that the Petitioner claimed within the initial filing that "[t]he field has recognized [his] authority by inviting him to review and evaluate the work of his peers no fewer than 60 times," but on appeal he claims 45 instances. And we agree with the Director that the Petitioner did not identify the evidence that might corroborate his assertion of performing peer review at least 60 times.

Nevertheless, the Petitioner provided a Clarivate Web of Science printout reflecting he performed peer review of 27 manuscripts. As a side note, this evidence shows he has 45 peer review records, but Clarivate's website provides the following information accounting for the difference between 27 and 45 instances of peer review:

> Are reviews of revisions considered separate reviews?
>
> Each round of peer review of a single manuscript is considered separately. If you review a manuscript for a second or third time, we will assign you a separate review record for each.

> When multiple reviews of one manuscript have been performed by a single author we concatenate them on the detail page (if the paper and review are both published).

*Managing Peer Reviews*, Clarivate Web of Science Help (2023), https://webofscience.help.clarivate.com/en-us/Content/peer-review-in-[redacted]-researcher-profile.html. As a result, we conclude the Petitioner's actual peer review experience at the time he filed the petition was 27.

We now turn the discussion to [redacted] a research publisher whose website reflects the organization publishes 231 journals. The Petitioner served as a "review editor" for [redacted] But, despite the Petitioner's claim to the contrary, he did not identify any evidence demonstrating he received any acclaim, attention, or recognition from his service as a judge or peer reviewer for this entity. As a result, the Petitioner did not show that he is considered among his peers to be one of the top reviewers based on his service at [redacted][2] Here, the Petitioner does not demonstrate how serving as a "review editor"—essentially performing peer review—on the editorial board of [redacted] shows his acclaim or that he is among the top percentage of those performing such judging duties in the field.

Evaluating the significance of the Petitioner's judging experience is acceptable under *Kazarian,* 596 F. 3d at 1121–22, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See generally* 6 *USCIS Policy Manual*, *supra*, at B.1 (indicating that an individual's participation as a judge should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

Finally, although his service is important, we are not persuaded that because the small number of noteworthy journals the appeal brief names relied on his expertise to perform a nominal amount of peer review, that this is representative of one who is among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The Petitioner's peer review spanned just under six years resulting in him reviewing 27 manuscripts. As the Director noted and the Petitioner has not sufficiently refuted, without evidence distinguishing the Petitioner's judging experience from others in the field—such as proof of receiving and completing independent review requests from a significant number of journals or conferences, serving in an editorial capacity for a distinguished journal, or chairing a technical committee for a reputable conference—we cannot determine that he is among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Regarding the Petitioner's remaining appellate claims, the level at which his contributions have impacted his field as a whole, is the determining factor as to whether he is among that small percentage who has risen to the very top of the field of endeavor and has sustained national or international acclaim at such

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[2] [redacted] utilizes what appears to be a unique method of allowing researchers to join their editorial board, as it solicits new members on its website. *See Join our editorial community*, [redacted] (2024), https://[redacted]editors/join-as-editor. This method seemingly tends to diminish the prestige of serving on one of their editorial boards, when evaluating such service for the purpose of this highly restrictive immigrant classification. We further observe that [redacted] does not appear to use a traditional editorial board structure as it includes those performing peer review on its "editorial board." Traditionally, peer reviewers are not members of an academic journal's editorial board, but [redacted] created an alternative structure and assigned titles to peer reviewers making it appear they are.

an elevated level. *See* 8 C.F.R. § 204.5(h)(2). Before the Director, the Petitioner claimed he is among the top researchers in his field because (1) the rate at which others in his field cited to his work, (2) top publications published his research, and (3) others in the field have relied on his findings. While the Director decided the Petitioner met the regulatory requirements within step one, they did not agree that he showed he has received widespread recognition for his achievements and is viewed by the field as having a career of acclaimed work in the second step; the final merits determination.[3]

On appeal, the Petitioner presents arguments similar to those he advanced before the Director, asserting much of his evidence was either not considered or was improperly discounted. We begin with the Petitioner's citation record as of the petition filing date on June 27, 2023. The Petitioner submitted his Google Scholar profile listing his total number of citations and the Clarivate InCites Essential Science Indicators chart listing the median citation rates for those in the Petitioner's field from 2013–2023. The Google Scholar profile reflected 31 published works in between 2009 and 2023, with only one paper that garnered a good number of citations and a total of only four publications above the median number of citations. In support of the claim that his citation rate is high compared to other physicists, the Petitioner provided the Clarivate InCites Essential Science Indicators chart listing the median citation rates for those in the Petitioner's field from 2013–2023. The Petitioner focuses on 2017, the year in which [redacted] published his most cited paper.

The Petitioner's single most cited paper garnered recognition significantly above the median in that year. However, this single achievement, even when combined with the Petitioner's remaining research findings does not rise to the level of those in the top of his field. Simply because the Petitioner's remaining work was "original" in that it did not merely duplicate prior research is not useful in setting him/her apart through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That report also requires that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation) . . . ." *Id.* Without some showing that this single published work was unusually influential or pioneering in the field and it placed the Petitioner among the top leaders in his area, we will not limit our analysis to a single published work, in a single year, for a single research field.

Instead, the Petitioner should demonstrate that the entirety of his publication record illustrates his sustained acclaim at a national or international level, which places him among those in the top of his field. But he did not make such a showing in this petition filing. Nor do we agree with the Petitioner that—based on this same evidence focusing on these same limitations of one paper, in a single year—he has adequately compared his citation record with other physicists because proving you had four published works cited above the field's median falls far short of this classification's demands.

The Petitioner also notes his works were published in top publications associated with a high impact factor. While we agree it is notable that he was published in a few top ranked journals, this is simply not enough. Of the Petitioner's 17 published works, two papers from 2009 and 2013 were in highly ranked

[3] Based on the present record, and the lack of analysis from the Director within step one under the regulatory criterion, it does not appear that the Petitioner submitted evidence sufficient to satisfy the regulation's requirements 8 C.F.R. § 204.5(h)(3)(v). But, (1) in the interest of finalizing this case without unnecessary delay, and (2) because the Director's decision did not contain analysis for us to evaluate, and (3) because it does not appear that a remand would result in a different outcome for this petition, we will not take the steps for the Director to reevaluate their determination under the step one regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v).

journals listing him as the primary author. We note the Petitioner did not provide evidence of those journals' ranking in 2009 or 2013 and considering those publications occurred more than a decade before he filed the petition, this lack of evidence has a detrimental effect on the probative nature of his evidence and on his claims. As the evidence is dated and not sufficiently corroborated, and because it was a limited number of published works in highly ranked journals in which the Petitioner was the primary author, it does not adequately advance his claims here.

Further, a high ranking or impact factor is reflective of the publication's overall citation rate. However, the evidence does not establish that the Petitioner's research being published in a journal with a high impact factor shows that his work has been widely recognized in the field. He therefore has not shown that the publication of his articles in these journals has garnered national or international acclaim. Overall, the Petitioner has not shown this experience places him among the small percentage at the top of the field, nor does it illustrate that he has demonstrated sustained national or international acclaim.

The Petitioner presented four recommendation letters with the initial filing and four more in response to the RFE. Within the final merits determination, the Director discussed the content from two of the letters then summarized their findings relating to all of the letters. Now, the Petitioner identifies four letters and offers the portions from them that he indicates the Director disregarded. We note the Director's denial did discuss two of the four letters the Petitioner identifies on appeal.

Pertaining to the first letter the Petitioner identifies on appeal, he alleges that the Director:

> [I]gnores the fact that [the author's] statements are based on personal familiarity with the work in question: *"[The Petitioner's] research and the manner in which he conducts it have had a tremendous influence on my own mathematical models. From experience, I have come to understand the skillset and ability required to perform such rigorous investigations."* These statements show that [the Petitioner] provided specific examples of the major significance of [his] work based on personal expertise.

(Emphasis in original). The Petitioner's appellate claims relating to the three remaining letters bear a resemblance to the above quote.

To show the Petitioner's contributions have been of major significance in the field, his claims should not focus on his work's influence on a few individual researchers' work. Other researchers' reliance on the Petitioner's work is a positive element and can be a method to corroborate the assertion that his noteworthy influence on other's work establishes that his contributions in the field are of major significance within step one, under the individual criterion. But within step two under the final merits portion, petitioners should establish that the broader field has relied on their findings and that reliance rises to the level of this classification's overall requirements. While this Petitioner's work is valuable, when considering the totality of the evidence, the degree at which others have used his work to test their hypotheses falls short of demonstrating (1) that his achievements have been recognized in the field of expertise through extensive documentation or (2) that his level of expertise places him among the small percentage at the very top of his field.

In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). The Petitioner's evidence confirms that he has made notable contributions in his field and performed peer review. However, considering the full measure of the Petitioner's ability and achievements, the level of his national or international acclaim and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation exhibiting he has attained a level of expertise placing him among that small percentage that has risen to the very top of the field of endeavor.

**ORDER:** The appeal is dismissed.